

ICC issues arrest warrant for Sudan's Omar Al Bashir

Sudan's President indicted on five counts of Crimes against Humanity and two counts of War Crimes, the crime of Genocide is not included in the warrant

Missoula, March 4, (Al-Masakin)--The International Criminal Court (ICC) at the Hague, Netherlands, has issued its long expected arrest warrant for Sudan's President Omar Al Bashir this morning for war crimes and crimes against humanity.

Al Bashir is suspected of intentionally directing attacks against the civilian population in Darfur, Sudan, which include murdering, exterminating, raping, torturing and transferring by force large numbers of civilians and looting their property. An estimated 300,000 people have died in the conflict.

This is the first warrant issued by the ICC for a Head of State. The Pre-Trial Chamber I of the ICC claims Al Bashir capacity as a Head of State does not grant him immunity from prosecution, or mitigate his criminal culpability.

According to the Court, the aforementioned crimes were committed during a five-year counter-insurgency campaign led by Sudan's government against the Sudanese Liberation Movement/Army (SLM/A), the Justice and Equality Movement (JEM) and other armed



groups opposing the Government of Sudan in Darfur.

It is alleged that this campaign started soon after the April 2003 attack on El Fasher airport as a result of a common plan agreed

upon at the highest level of the Government of Sudan by Omar Al Bashir and other high-ranking Sudanese political and military leaders. It lasted at least until July 14 2008, the date of the filing of the Prosecution's Application for the warrant of arrest for Omar Al Bashir.



International Criminal Court's (ICC) prosecutor Luis Moreno Ocampo (R) comments on the warrant of arrest against Sudan's President Omar Hassan al-Bashir at the ICC in the Hague March 4, 2009. REUTERS/Jerry Lamden (NETHERLANDS)

A core component of that campaign was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived to be close to the organized armed groups opposing the Government of Sudan in Darfur.

The civilian population was to be unlawfully attacked by Government of Sudan forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the National Intelligence and Security Service and the Humanitarian Aid Commission.

The Chamber found reasonable grounds to believe that Omar Al Bashir, as President and Commander-in-Chief *de jure* and *de facto*, of having coordinated the design and implementation of the counter-insurgency campaign. In the alternative, it also found that there are reasonable grounds to believe that he was in control of all branches of the “apparatus”

of the State of Sudan and used such control to secure the implementation of the counter-insurgency campaign.

The counts

The warrant of arrest for Omar Al Bashir lists 7 counts on the basis of his individual criminal responsibility (article 25(3)(a)) including:

- Five counts of crimes against humanity: murder – article 7(1)(a); extermination – article 7(1)(b); forcible transfer – article 7(1)(d); torture – article 7(1)(f); and rape – article 7(1)(g);
- Two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities – article 8(2)(e)(i); and pillaging – article 8(2)(e)(v).

Findings concerning genocide

The majority of the Chamber, Judge Anita Ušacka dissenting, found that the material provided by the Prosecution in support of its application for a warrant of arrest failed to provide reasonable grounds to believe that the Government of Sudan acted with specific intent to destroy, in whole or in part, the Fur, Masalit and Zaghawa groups.

Consequently, the crime of genocide is not included in the warrant issued for the arrest of Omar Al Bashir. Nevertheless, the Judges stressed that if additional evidence is gathered by the Prosecution, the decision would not prevent the Prosecution from requesting an amendment to the warrant of arrest in order to include the crime of genocide.

Cooperation of States

The Judges directed the Registrar to prepare and transmit, as soon as practicable, a request for cooperation for the arrest and surrender of Omar Al Bashir to Sudan, and to all States Parties to the Rome Statute and all United Nations

Security Council (UNSC) members that are not party to the Statute, as well as to any other State as may be necessary.

The Judges found that, according to UNSC resolution 1593 and articles 25 and 103 of the UN Charter, the obligation of the Government of Sudan to fully cooperate with the Court prevails over any other international obligation that the Government of Sudan may have undertaken pursuant to any other international agreement.

Obstruction of Justice

Pre-Trial Chamber I also found that the Government of Sudan has systematically refused to cooperate with the Court since the issuance of warrants for the arrest of the Sudanese Minister for Humanitarian Affairs, Ahmad Harun, and a regional Janjaweed militia leader, Ali Kushayb, on May 2, 2007.

As a result, the Judges emphasized that, according to article 87(7) of the Statute, if the Government of Sudan continues to fail to comply with its cooperation obligations to the Court, the competent Chamber “may make a finding to that effect” and decide to “refer the matter [...] to the Security Council.”

Furthermore, the Judges noted that the dispositive part of UNSC resolution 1593 expressly urges all States, whether party or not to the Rome Statute, as well as international and regional organizations to “cooperate fully” with the Court.

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